

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING AND AMENDING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **renumber and amend** NR 404.02 (4e) and (4m); to **amend** NR 400.02 (40), (70), (79), and (135), 405.02 (25k), 405.14 (4), 406.04 (1) (n) (intro.) and 1. (intro.) and 2. 484.03 (5), and 484.04 (5) and (6g); and to **create** NR 400.02 (123m), 400.03 (4) (ki), 405.02 (27) (a) 5m., 405.07 (8) (a) 3m., 406.04 (2) (cs), 407.03 (2) (be), 408.02 (32) (a) 5m., and 408.06 (1) (cm), relating to permit requirements for particulate matter emissions and affecting small business.

AM-16-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: The State Implementation Plan developed under s. 285.11(1) and (6), Stats., is revised.

2. Statutory authority: ss. 227.11(2)(a) and 285.11(1), (16) and (17), Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 227.14(1m)(b), Stats., allows the Department to use the format of federal regulations in preparing a proposed rule if it determines that all or part of a state environmental regulatory program is to be administered according to standards, requirements or methods which are similar to standards, requirements or methods specified for all or part of a federal environmental program. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(16), Stats., requires the Department to promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source. Section 285.11(17) requires the Department to develop and implement rules that define the term modification in a manner consistent with the clean air act.

4. Related statute or rule:

None.

5. Plain language analysis: The proposed rules contained in this order reflect changes made by the United States Environmental Protection Agency (EPA) in their regulations regarding the regulation of particulate matter less than 2.5 microns in size (PM_{2.5}). The Department needs to make this change in order to retain EPA approval of Wisconsin's air permit programs.

PM_{2.5} is proposed to be included as a pollutant used to determine whether a facility is a major source of air pollution. Additionally, increases in PM_{2.5} emissions will potentially trigger the need to obtain an air pollution control construction permit, including requirements to control emissions to levels which represent best available control technology or lowest achievable emission rate.

Additionally, the rule package includes some cleanup changes to otherwise unaffected existing rules. These changes are proposed to include up-to-date test methods and definitions in these existing rules. These changes do not change the effect or intent of these rules.

6. Summary of, and comparison with, existing or proposed federal regulation: The proposed PM_{2.5} rules will make the regulations consistent with the equivalent Federal rules.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): The proposed rule is based on the federal rule changes. The adjacent states will all be implementing the federal rule changes.

8. Summary of factual data and analytical methodologies used and how any related findings

support the regulatory approach chosen: The proposed rule is based on the federal rule changes and the data and methodologies used by USEPA in developing these rules. Some portions of the proposed rule have yet to be finalized by the USEPA. Finalization of these rule sections is expected in Spring 2010. Placeholders for these final rule additions are included in the proposed rule.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses. Additionally, USEPA has concluded that this rule will not impact a significant number of small entities.

10. Effect on small business: These rules should not have a significant economic impact on small businesses because major air pollution sources do not generally meet the definition of a small business.

11. Agency contact person: Steven Dunn, P.O. Box 7921, Madison, WI 53707, Telephone number: (608) 267-0566; e-mail address: Steven.Dunn@wisconsin.gov

12. Place where comments are to be submitted and deadline for submission:

Public hearings have been scheduled for:

Date and Time

June 7, 2010, Monday
at 2:30 PM

Location

Natural Resources State Office Building
Room G09
101 S. Webster Street
Madison, WI

June 8, 2010, Tuesday
at 1:30 PM

Havenwoods - Auditorium
6141 N Hopkins
Milwaukee, WI

June 9, 2010, Wednesday
at 2:00 PM

Northcentral Technical College
Main Building, Room E101
1000 West Campus Drive
Wausau, WI

Comments of the proposed rule must be submitted on or before June 14, 2010. Written comments may be submitted at the public hearings, by U.S. mail, fax, e-mail, or through the Internet, and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

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PO Box 7921
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E-mail: Steven.Dunn@wisconsin.gov

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm> .

SECTION 1. NR 400.02 (40), (70), and (79) are amended to read:

NR 400.02 (40) “Coal” means all solid fuels classified as anthracite, bituminous, subbituminous or lignite by ASTM designation ~~D388-99e~~ D388-99e1 (2004), incorporated by reference in s. NR 484.10 (7).

(70) “Fuel oil” means any petroleum-based fuel, including diesel fuel or petroleum derivatives such as oil tar, as defined in ASTM ~~D396-02~~ D396-02a, incorporated by reference in s. NR 484.10 (8), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

(79) “Heat input” means the total gross calorific value per unit of time of all fuels being burned, where gross calorific value of a fuel is measured by ASTM Method D240-02, D1826-94 or ~~D5865-02~~ D5865-04, incorporated by reference in s. NR 484.10 (4), (26) and (55g). Where the test method gives a higher and a lower heating value, heat input is calculated in Btu per hour using the higher heating value of the fuel.

SECTION 2. NR 400.02(123m) is created to read:

NR 400.02(123m) "PM_{2.5} emissions" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, emitted to the ambient air as measure by an applicable reference method based or an equivalent or alternative method specified by the department.

SECTION 3. NR 400.02 (135) is amended to read:

NR 400.02 (135) “Residual fuel oil” means an industrial fuel oil of grade No. 4, 5 or 6, as determined by the specifications in ASTM ~~D396-02~~ D396-02a, incorporated by reference in s. NR 484.10 (8).

SECTION 4. NR 400.03 (4) (ki) is created to read:

NR 400.03 (4)(kh) “PM_{2.5}” -- particulate matter with an aerodynamic diameter $\leq 2.5 \mu\text{m}$

SECTION 5. NR 404.02 (4e) and (4m) are renumbered NR 400.02 (123e) and (123s), and as renumbered are amended to read:

NR 400.02 (123e) "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on Appendix ~~N~~ L of 40 CFR part 50, incorporated by reference in s. NR 484.04(6g), and designated in accordance with 40 CFR part 53, incorporated by reference in s. NR 484.03(5), or by an equivalent method.

(123s) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR part 50, incorporated by reference in s. NR 484.04 (5), and designated in accordance with 40 CFR part 53, incorporated by reference in s. NR 484.03 (5), or by an equivalent method.

SECTION 6. NR 405.02 (25k) (intro.) is amended to read:

NR 405.02 (25k) (intro.) "Replacement unit" means an emissions unit for which all the criteria listed in pars. (a) to (d) are met. No creditable emission reductions ~~shall~~ may be generated from shutting down the existing emissions unit that is replaced.

SECTION 7. NR 405.02 (27) (a) 5m. in Table A is created to read:

NR 405.02 (27) (a) 5m. PM_{2.5}: 10 tpy, also 40 tpy of nitrogen oxides or 40 tpy of sulfur dioxide

SECTION 8. NR 405.07 (8) (a) 3m. is created to read:

NR 405.07 (8) (a) 3m. PM_{2.5} – [To be adopted by USEPA]

SECTION 9. NR 405.14 (4) is amended to read:

NR 405.14 (4) CLASS I VARIANCES. The owner or operator of a proposed major source or

major modification may demonstrate to the federal land manager that the emissions from the source would have no adverse impact on the air quality–related values, including visibility, of these lands, notwithstanding that the change in air quality resulting from emissions from the source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with this demonstration and so certifies to the department, the department may, provided that applicable requirements of this chapter are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of particulate matter measured as PM₁₀, sulfur dioxide and nitrogen dioxide would not exceed the following maximum allowable increases over minor source baseline concentration for these air contaminants.

Pollutant	Maximum allowable increase (µg/m ³)
PM ₁₀	
Annual arithmetic mean	17
24-hour maximum	30
<u>PM_{2.5}</u>	<u>To be finalized by USEPA</u>
Sulfur dioxide	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen dioxide	
Annual arithmetic mean	25

SECTION 10. NR 406.04 (1) (n) (intro.) and 1. and 2. (intro.) are amended to read:

NR 406.04 (10) (n) (intro.) Renovation or demolition operations involving ~~friable~~ regulated asbestos containing material provided that the provisions of subd. 1. or 2. are met:

1. The amount of regulated asbestos containing material is less than 260 linear feet on pipes or 160 square feet on other facility components.

2. If the amount of regulated asbestos containing material is at least 260 linear feet on pipes or at least 160 square feet on other facility components, all of the following conditions are met:

SECTION 11. NR 406.04 (2) (cs) is created to read:

NR 406.04 (2) (cs) The maximum theoretical emissions from the source for PM_{2.5} do not exceed 2.2 pounds per hour.

SECTION 12. NR 407.03 (2) (be) is created to read:

NR 407.03 (2) (be) The maximum theoretical emissions from the source for PM_{2.5} do not exceed 2.2 pounds per hour.

SECTION 13. NR 408.02 (32) (a) 5m. is created to read:

NR 408.02 (32) (a) 5m. PM_{2.5}: 10 tpy; 40 tpy for nitrogen oxides; and 40 tpy for sulfur dioxide.

SECTION 14. NR 408.06 (1) (cm) is created to read:

NR 408.06 (1) (cm) PM_{2.5} emission increases may be offset by decreases in nitrogen oxides or sulfur dioxide emissions, that are otherwise creditable, at a ratio of 40 tpy of sulfur dioxide for each ton of direct PM_{2.5} emissions and 200 tpy of nitrogen oxides for each ton of direct PM_{2.5} emissions.

SECTION 15. NR 484.03 (5) in Table 1 is amended to read:

NR 484.03 (5)

Table 1
CFR References

CFR Reference	Title	Incorporated by Reference For
(5) 40 CFR part 53	Ambient Air Monitoring Reference and Equivalent Methods	NR 404.02(4e) and (4m) <u>NR 400.02 (123e) and (123s)</u> NR 404.06(3)(b)

SECTION 16. NR 484.04 (5) and (6g) in Table 2 are amended to read:

NR 484.04 (6g)

Table 2

CFR Appendix References			
	CFR Appendix Referenced	Title	Incorporated by Reference For
(5)	40 CFR part 50 Appendix J	Reference Method for the Determination of Particulate Matter as PM ₁₀ in the Atmosphere	NR 404.02(4m) <u>NR 400.02 (123s)</u>
(6g)	40 CFR part 50 Appendix L	Reference Method for the Determination of Particulate Matter as PM _{2.5} in the Atmosphere	NR 404.02(4e) <u>NR 400.02 (123e)</u>

SECTION 17. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 18. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)